IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3493 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REVABEN W/O BHAIJIBHAI SHANABHAI - Petitioner(s)

Versus

AJITSINH HAJAJI DABHI & 8 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4

None for Respondent(s) : 1, 4, 6,

MR PJ VYAS for Respondent(s) : 1.2.1 - 3, 5,

MR JM CHAUHAN for Respondent(s) : 7 - 9.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1, In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dtd.13/3/1990 in Revision Application No.TEN-BA-548 of 1984 in dismissing the same and confirming the order passed by the Deputy Collector (Land Reforms), Kheda dtd.27/2/1984 in Appeal No.6197 of 1983.

2. The dispute is with regard to the land bearing Survey No.129/2B, admeasuring 21 Gunthas of Village Ratanpur (hereinafter referred to as “the land in question) and the petitioner claims to be the tenant of the said land in question. Which was originally owned by Naranbhai Lallubhai Surhar and Babubhai Lallubhai Suthar. The Mamlatdar and Agricultural Lands Tribunal (ALT), Kapadvanj vide order dtd.23/9/1982 declared the

petitioner as the tenant of the land in question. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Kapadvanj dtd.21/11/1983, the original revisionist, heir of Hajaji Umedji Dabhi – respondent Nos.1 to 6 herein, preferred an appeal before an appeal before th Deputy Collector (Land Reforms), Kheda being Appeal No.6197 of 1983, contending *inter-alia* that they are neighbours of the land in question and the petitioner cannot be declared to be tenant of the land in question, as the land in question would be a fragment land under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and the said land in question can be purchased by the petitioners. Accepting the contention on behalf of the respondent Nos.1 to 6 herein, the Dy.Collector (Land Reforms) (Appeals) Kheda, by his judgement and order dtd.27/2/1984 remanded the matter to the Mamlatdar and ALT for taking a decision and holding an inquiry whether

the land in question is fragment land and whether the for the same land, the petitioner can be declared to be tenant or not. Being aggrieved and dissatisfied with the order passed by the Dy.Collector (Land Reforms) (Appeals), Kheda dtd.27/2/1984 in Appeal No.6197 of 1983, the petitioner preferred revision application NO.548 of 1984 before Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal vide judgement and order dtd. 15/3/1990 dismissed the said revision application confirming the order passed by the Deputy Collector (Land Reforms), Kheda dtd.27/2/1984. Being aggrieved and dissatisfied with the judgement and order passed by the Gujarat Revenue Tribunal dtd.15/3/1990 in Revision Application No.TEN-BA-548 of 1948, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.J.M. Patel, learned advocate appearing on behalf of the petitioner has vehemently

submitted that the dispute with regard to the tenancy was with the original land owner and when the original land owner has not challenged the order passed by the Mamlatdar and ALT, by which the petitioner was declared as tenant, the respondent Nos.1 to 6 being the neighbours, had no *locus-standi* challenging the said order before the Dy.Collector and therefore, the order passed by the Dy.Collector (Land Reforms)(Appeals), and confirmed by the Gujarat Revenue Tribunal are required to be quashed and set aside.

4. It is required to be noted that by order dtd.27/2/1984, the Dy.Collector (Land Reforms) (Appeals) had remanded the matter to the Mamlatdar and ALT and has directed the Mamlatdar and ALT to hold an inquiry whether the land in question is a fragment land or not and under the provisions of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, whether the petitioner can be

declared to be tenant or not, if the same is fragment land. Therefore, without even considering the larger question with regard to the *locus-standi* of the respondent Nos.1 to 6, even otherwise, the Dy.Collector could have exercised the powers *suo-motu* and directed the Mamlatdar and ALT to hold an inquiry. Under the circumstances, no interference is called for at the hands of this Court in this petition under Article 227 of the Constitution of India.

5. For the foregoing reasons, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. The interim relief granted earlier is vacated forthwith. However, there will be no order as to costs.

(M.R. SHAH,J.)

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